



Disciplining Students with Disabilities

Bill Wilson

Assistant General Counsel for Special Education

Tennessee Department of Education

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Suspensions and Short Term Removals

Suspensions of 10 Days or Less

Schools are free to remove or “suspend” students with disabilities from school for up to 10 cumulative days in a school year. During the 10 “FAPE (Free Appropriate Public Education) Free” days there is no duty to provide alternative services, IEP meeting, manifestation review, behavior intervention plans, or functional behavior assessment.

20 U.S.C. §1415(k); 34 CFR § 300.530

Suspensions and Short Term Removals

In-School Suspensions

An in-school suspension does not count toward the 10 days as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the student's IEP, and continue to participate with non-disabled students to the extent they would have in their current placement.

Federal Register, Vol. 71, No. 156 at 46715

Suspensions and Short Term Removals

Bus Suspensions

If transportation is part of the IEP, it counts toward the 10 days, unless the LEA provides alternative transportation. If transportation is not part of the IEP, it does not count toward the 10 days and the student must provide his or her own transportation.

Federal Register, Vol. 71, No. 156 at 46715

Suspensions and Short Term Removals

Short Term Removals

Short term removals can include removals of lesser significance – abbreviated removals from the classroom, time-out, and being sent to the principal, do not count toward the 10 days.

Long Term Removals and Changes of Placement

A removal constitutes a change of placement if it exceeds 10 consecutive school days, *or*

A series of removals constitute a pattern amounting to a change of placement because:

1. They total more than 10 school days in a school year;

Long Term Removals and Changes of Placement

2. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; *and*
3. Due to additional factors such as length of each removal, total amount of time the student has been removed and the proximity of the removals to one another.

Long Term Removals and Changes of Placement

The school is required to provide the student with educational services on any days beyond the 10 cumulative “FAPE Free” days of removal during which no services are required.

20 U.S.C. 1415(k); 34 CFR§300.536

Long Term Removals and Changes of Placement

If a change of placement or a long term removal occurs, the IEP team determines the interim setting for services, and the IEP team has the duty to provide, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not recur.

20 U.S.C. §1415(k)(1)(D)(ii); 34 CFR §300.530(d)(1)(ii)

Long Term Removals and Changes of Placement

A reevaluation and manifestation determination must be conducted for a student under Section 504.

34 CFR §104.35(a)

Behavior management/discipline plans must be developed in response to misconduct by students under Section 504.

Morgan v. Chris L., 106 F.3d 401 (6th Circuit (Tenn.))

Manifestation Determinations

The Review Standard

Removals exceeding ten (10) consecutive school days require a review, wherein the team must ask:

1. Was the conduct in question caused by, or did it have a direct and substantial relationship to, the student's disability; or
2. Was the conduct in question the direct result of the LEA's failure to implement the IEP.

20 U.S.C. §1415(k)(1)(E)(i), 34 CFR §300.530(e)

Manifestation Determinations

Conduct which has merely an attenuated association to a student's disability, such as low self-esteem, would not equal a manifestation.

Failure to implement the IEP would require something more than an attenuating circumstance.

Manifestation Determinations

Manifestation Review Team

Members include a representative from the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency). The team is required to review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents in making its determination.

34 CFR §300.530(e)

Manifestation Determinations

Time Limit

The review must be conducted within 10 school days and may be conducted on as little as 24 hours notice to the parent.

34 CFR §300.530(e); Tenn. Rules & Regs. 0520-1-9-.15

Manifestation Determinations

Services and Setting

Services must be provided during removal to an interim alternative setting pending the manifestation review.

34 CFR §300.530(d)

The IEP Team determines the interim alternative educational setting for services.

34 CFR §300.531

Manifestation Determinations

Section 504 also requires a manifestation review. The review is conducted in substantially the same manner as under IDEA.

34 CFR §104.35

Under Section 504, there is no requirement to include a parent as a member of the team.

34 CFR §104.35(c)

Manifestation Determinations

Conduct is Not a Manifestation

Discipline is the same as applied to a non-disabled student, but the LEA must provide services during any period of removal.

The IEP team determines the interim alternative educational setting for services.

20 U.S.C. §1415(k)(1)(C) and (2); 34 CFR §300.530(c) and 531

Manifestation Determinations

Conduct is Not a Manifestation

Under Section 504 discipline is the same as applied to a non-disabled student and the LEA does not have to provide services during any period of removal.

34 CFR §104.35

Manifestation Determinations

Conduct is a Manifestation

LEA must conduct a functional behavior assessment (FBA), unless one has been done due to similar conduct. (FBA requires parental consent.)

A behavior plan must be developed, or modified, to address the behavior in question.

Manifestation Determinations

Conduct is a Manifestation

The student is returned to the placement from which he or she was removed unless the parent and school agree to a change of placement as part of the modification of the behavior intervention plan.

20 U.S.C. §1415(k)(1)(F)(iii); 34 CFR §300.530(f)

Manifestation Determinations

Conduct is a Manifestation

Under Section 504, the LEA must re-evaluate to determine whether the current placement is appropriate or should be changed. Otherwise, the student is returned to the placement from which he or she was removed unless the parent and school agree to a change of placement.

Appeals

Parents' Challenge to Determination

If the parents desire to challenge a finding of no manifestation, they may request an expedited due process hearing. The hearing must be conducted within 20 school days of the LEA's receipt of the request and a decision rendered within 10 school days of the hearing.

20 U.S.C. §1415(k)(3) and (4)(B), §1415(f)(1)(A); 34 CFR §300.532

Appeals

The student remains in the disciplinary setting pending the outcome of the expedited hearing. Stay put, in disciplinary matters, is the interim alternative setting determined by the school, not the setting from which the student was removed.

20 U.S.C. §1415(k)(3)(4); 34 CFR §300.533

Section 504 has no stay put provision.

Appeals

LEA's Challenge to Determination

LEA must show that continuing the student in his or her placement is substantially likely to result in injury to the student or others. If the LEA prevails in an expedited hearing, the judge may order the student to remain in the interim alternative setting for not more than 45 school days.

20 U.S.C. §1415(k)(3)(B)(ii)(II); 34 CFR §300.53

Student Disciplinary Hearing

In student disciplinary hearing appeal cases involving a removal/suspension of a student with a disability, it is advisable to conduct the special education manifestation determination review prior to conducting a student disciplinary hearing pursuant to T.C.A. §49-6-3401.

Student Disciplinary Hearing

The student disciplinary hearing authority may affirm the decision of the principal to remove/suspend the student, overturn the decision or modify it.

In any event, the LEA must provide services during any period of removal.

20 U.S.C. §1415(k)(1)(C) and (2); 34 CFR §300.530(c) and 531; T.C.A. §49-6-3401

IDEA Special Exceptions – 45 Days

There are three exceptions to the general disciplinary rules: ***weapons, drugs and serious bodily injury.***

The exceptions allow school officials to remove students to interim alternative settings for ***up to 45 school days, regardless of whether the behavior is a manifestation of the disability.***

LEA must provide services in the alternate setting during any period of removal.

IDEA Special Exceptions – 45 Days

Carrying a weapon to or possessing a weapon at school, on school premises, or to or at a school function. Weapon is defined as a device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

20 U.S.C. §1415(k)(1) and (7)); 34 CFR §300.530(g)

IDEA Special Exceptions – 45 Days

Knowingly possessing or using illegal drugs or selling or soliciting the sale of controlled substances while at school, on school premises, or at a school function.

Illegal drugs and controlled substances do not include substances legally possessed under the supervision of a licensed health-care professional.

20 U.S.C. §1415(k)(1) and (7); 34 CFR §300.530(g)

IDEA Special Exceptions – 45 Days

Serious bodily injury inflicted on another person while at school, on school premises, or at a school function. Serious bodily injury means bodily injury involving a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

20 U.S.C. §1415(k)(1) and (7)); 34 CFR §300.530(g)

Section 504

Section 504 contains no such exceptions are available for weapons and serious bodily injury and a student may be disciplined the same as a non-disabled student. However, a manifestation review is necessary and due process must be afforded.

Note:

Under Section 504, neither a manifestation review nor due process are available in disciplinary actions pertaining to the possession or use of illegal drugs or alcohol.

Law Enforcement and Courts

LEA personnel may report a suspected crime committed by a student with a disability by calling a law enforcement official.

T.C.A. §49-10-1304(b)(3)(A)

LEA personnel may report a crime committed by a student with a disability to appropriate authorities and nothing in the IDEA prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

Law Enforcement and Courts

A LEA cannot file a juvenile court petition against a student with a disability unless the conduct that is the basis for the petition is determined not to be a manifestation of the disability.

T.C.A. §49-10-1304(d)(3)(B)

Law Enforcement and Courts

A school resource officer (SRO), as a state authorized law enforcement official, may take custody of a student with a disability and may subsequently file a juvenile petition based upon information from LEA personnel that an offense has been committed, or is being committed, or upon witnessing the commission of an offense, regardless of whether the conduct was a manifestation of the student's disability.

20 U.S.C. §1415(k)(6); 34 C.F.R. §300.535

Law Enforcement and Courts

Subsequent to action by an SRO, LEAs must conduct a manifestation review in order to determine an appropriate educational placement pending, and possibly subsequent to, judicial action concerning a student with a disability, should the student return to the LEA.

LEAs must comply with orders issued by courts concerning a student with a disability.

20 U.S.C. §1415(k)(6); 34 C.F.R. §300.535; 20 U.S.C. §1415(k)(1)(E)(i); 34 CFR §300.530(e)

Alternative Schools

“Participate” in the general education curriculum does not mean that an LEA must replicate in an alternative school setting every aspect of the services that a student would receive in his or her normal classroom.

All that is necessary is that the student continues to be provided a FAPE.

Federal Register, Vol. 71, No. 156, at 46716

Alternative Schools

Attendance in an alternative school is voluntary, unless a local board of education adopts a policy mandating attendance.

T.C.A. §49-6-3402(c)

If transportation is not provided for all students remanded to an alternative school, it does not have to be provided for students with disabilities, unless a student's IEP specifically includes a provision for special transportation.

C.G. vs. Henderson County Board of Education, TDOE (2003)

Homebound for IDEA Discipline

Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the student's needs. This regulation does not apply to Section 504 plans.

Tenn. Rules & Regs. 0520-01-09-.07(2) and (3)



Homebound for IDEA Discipline

The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a FAPE. This regulation does not apply to Section 504 plans.

Tenn. Rules & Regs. 0520-01-09-.07(2) and (3)

Unidentified Students

Whether a student could assert the disciplinary protections of IDEA depends on the school's knowledge of the student before the misconduct occurred.

20 U.S.C. 1415(k)(5)(B)-(C)

Section 504 has no such provisions with regard to unidentified students.

Unidentified Students

The LEA will have knowledge if:

1. Parent of the student expressed concern in writing to LEA officials or a teacher that the student needed special education;
2. Parent requested an evaluation; or
3. Teacher or other LEA personnel expressed specific concerns about a pattern of behavior to LEA officials.

Unidentified Students

The LEA will not have knowledge if:

1. LEA has evaluated and determined the student ineligible; or
2. Referral was made and parent refused evaluation or services.

Unidentified Students

Expedited Evaluation

If a referral to special education is made after the behavioral incident, the LEA should conduct an expedited evaluation, but the student remains in whatever placement may have been in effect at the time of the incident.

20 U.S.C. 1415(k)(5)(D)(ii)

Unidentified Students

Early Intervening Services

Students served in RTI (Responsiveness to Intervention) Early Intervening Services Programs do not enjoy the disciplinary protections of IDEA and are disciplined the same as non-disabled students.

Federal Register, Vol. 71, No. 156 at 46727

Disciplining Students with Disabilities

These materials are not intended as legal advice, and should not be so construed. Law, local policy, and unique facts make dramatic differences in analyzing any situation. Consult your LEA attorney for legal advice regarding a specific situation.